

**Jorgensen, Jay T.**

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**From:** Jorgensen, Jay T.  
**Sent:** Monday, June 30, 2008 7:27 PM  
**To:** 'Ward, Liza'  
**Cc:** 'David Page'; 'Bond, Michael R.'  
**Subject:** RE: State of Oklahoma, et. al. v. Tyson, et. al

Dear Liza,

Thanks for your email. I've checked with the other defendants, and we don't think there's a need to go outside the normal deposition scheduling process for the substantive depositions of Drs. Wells and Engel. Mike Bond, David Page and Bob Nance are handling that deposition scheduling. Once the defendants have functioning copies of your models we will need to take those substantive depositions to explore the assumptions and decisions that went into the models. But before we can talk about the details of the models we need to have copies that work the same way yours do. As I've mentioned before, we need to be able to assemble the jumble of computer files that plaintiffs produced in the same way your experts assemble them. Otherwise the plaintiffs' and defense experts will be unable to assist the court in understanding the models because they won't have the same models to discuss.

We can think of two ways to make sure that plaintiffs and defendants have the same models assembled in the same manner. First, we could conduct early depositions of your experts (separate from the substantive depositions discussed above) to go through the process of assembling the models from among the multitude of files plaintiffs produced. You note logistical difficulties associated with those depositions, but those are similar to the logistical difficulties associated with any deposition. We'd be glad to work with plaintiffs to resolve those logistical issues.

Second, plaintiffs could provide defendants with a written protocol for assembling your models. If you give us a step-by-step procedure for assembling working copies of your models (i.e., first use the file named "x", which is found in "y" directory), we may not need to take these additional depositions to gain the same information. Of course, we would expect that plaintiffs would not criticize our experts for assembling your models according to the instructions you set out in these protocols.

Our experts continue to inform us that the assortment of files plaintiffs produced are not working copies of plaintiffs' models, without information about how to assemble the files. I hope these proposals help the parties move forward. We look forward to your response.

Jay

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**From:** Ward, Liza [mailto:lward@motleyrice.com]  
**Sent:** Monday, June 30, 2008 11:40 AM  
**To:** Jorgensen, Jay T.  
**Cc:** David Page; Bond, Michael R.  
**Subject:** RE: State of Oklahoma, et. al. v. Tyson, et. al

Dear Jay:

While the State has continued to try to work with you over the past several weeks to provide additional information to aid in your review and analysis of Dr. Wells' and Dr. Engel's modeling work, we dispute continued claims that the State has somehow not complied with its discovery obligations. You have had working copies of Dr. Engel's modeling work since at least May 22. You have had working copies of Dr. Wells' modeling work since at least May 29. Additionally, the State has fully and promptly responded to every single question you have asked regarding the modeling and these experts' computer files. We frankly do not understand what additional questions you could possibly have regarding these issues.

7/7/2008

If you are ready to take the depositions of Dr. Wells and Dr. Engel, we will endeavor to change the dates to which you have already agreed. We will not agree, however, that you can split the depositions over long periods of time. Once these experts sit for their depositions, the deposition will continue from day one to day two until complete (but, as previously agreed, no more than two days). It is important to point out that your request is particularly unreasonable with respect to Dr. Wells who, as you know, is currently living in Israel. If you want to take the deposition sooner than the dates agreed by the parties, please let us know.

In light of the fact that your current request for splitting the depositions of Drs. Engel and Wells goes far beyond the scope of your Motion to Compel and given the fact that the State has provided you with working copies of the models as well as responses to all your questions regarding Dr. Wells' and Dr. Engel's organization of their modeling files, we again ask that you withdraw the Motion to Compel. We continue to believe that this motion was prematurely filed and that the State has complied with its obligations under the Rules. As a result, we believe that we are entitled to any costs associated with responding to the motion. Thank you.

**Elizabeth "Liza" C. Ward** | Attorney at Law | Motley Rice LLC  
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**From:** Jorgensen, Jay T. [mailto:jjorgensen@sidley.com]  
**Sent:** Friday, June 27, 2008 3:15 PM  
**To:** Ward, Liza  
**Cc:** David Page; Bond, Michael R.  
**Subject:** RE: State of Oklahoma, et. al. v. Tyson, et. al

Liza,

I have conferred with the defendants and their experts, and we continue to believe that the plaintiffs have not met their obligation to produce working copies of your models. What we have been given is a hodge-podge of electronic files, and we're left to guess how to assemble them (and in what order) to try to recreate the simulations on which many of your experts rely. For the last month we have corresponded with you in an effort to learn which of these files are duplicates, which are drafts or final versions, and in what order they should be assembled to producing operational copies of your models. That's a month of time wasted.

Defendants continue to believe this issue can be resolved without Court intervention. To stop the time-consuming process of back-and-forth discussion on this, we propose to take 1-day depositions of Drs. Engle and Wells in the next two weeks. We ask that they bring computers to these depositions, and that those computers be loaded with the exact same files plaintiffs produced to defendants. Since plaintiffs already produced a copy of these files to us, it should be relatively easy to put the same copy on another computer. This will avoid the concern you raise about defendants accessing your experts' home computers, where they may have files unrelated to this case.

These 1-day depositions will address how your models operate (such as what files are utilized and in what order). By having your experts walk through the process of putting the multitude of files together in the right order, we will be informed how your models work. Then our experts can test the models, and we can schedule follow-up depositions with Drs. Engle and Wells on the substance of those tests.

I think you'll agree that the Court needs both sides to understand how your models operate. It will waste the Court's time if plaintiffs criticize defendants because our experts did not assemble your modeling files in the same manner as plaintiffs experts. When both sides understand your models, we will be able to test them and explain them to the Court.

Defendants always anticipated that two days of deposition would be required for both Drs. Engle and Wells. Perhaps by having one day of deposition for each of these experts early in July, we will be able to reduce the length of the subsequent deposition for each of these experts. We cannot realistically take these subsequent depositions until we have working copies of the models to test and discuss.

Would you provide defendants with dates in the next two weeks when Drs. Engle and Wells can be deposed?

Jay

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**From:** Ward, Liza [mailto:lward@motleyrice.com]  
**Sent:** Thursday, June 26, 2008 04:14 PM  
**To:** Jorgensen, Jay T.  
**Cc:** David Page  
**Subject:** RE: State of Oklahoma, et. al. v. Tyson, et. al

Dear Jay:

I write in response to your inquiry of today's date. First, I must reiterate that the State's experts have produced their materials in the file structures maintained on their computers. Defendants have been provided with all the tools necessary to run the models that are the subject of Defendants' Motion to Compel. The State and its experts strongly object to Defendants' request to access to the computers of its experts. These computers are not dedicated solely to work related to this case and, therefore, contain personal information and unrelated work performed by Dr. Wells and Dr. Engel. The State is confident that the Court would not find this request to be reasonable--especially in light of the State's continued willingness to answer every question posed by Defendants even where such requests were not apparent from pending discovery requests.

Second, with respect to your question regarding the State's Supplemental Response to Request No. 2, you are correct that the calibration files are located in the folder called "GLEAMS". This folder is not a subfolder of y:\Engels\Materials\Gleams\_final, but is on the same level as that folder. Again, this is the same file structure as is on Dr. Engels' computer.

Third, I have attached a zip file called "2input.zip", which contains the information that you are seeking. This file was created by Dr. Engel in response to Defendants' inquiries by extracting data from previously produced files. While it is not how Dr. Engel originally maintained this data, he has taken additional steps to allow Defendants to more readily locate the information sought.

Finally, Request No. 6 does not specifically request "post-processing results", and both the State and Dr. Engel are unclear precisely what data you seek. However, if you are requesting post-processing codes, Dr. Engel believes that no automated post-processing codes had been created at this stage in the modeling process and, therefore, none were produced to Defendants.

I trust that all of Defendants' concerns have now been addressed. The State again requests that Defendants withdraw the Motion to Compel by the close of business today. Thank you.

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**From:** Jorgensen, Jay T. [mailto:jjorgensen@sidley.com]

**Sent:** Thursday, June 26, 2008 12:19 AM  
**To:** Haubert, Jane M.; dpage@riggsabney.com  
**Cc:** Ward, Liza  
**Subject:** RE: State of Oklahoma, et. al. v. Tyson, et. al

Liza,

Thank you for the attached letter. The defendants are still hopeful that the parties can work out their differences on the production of a working copy of plaintiffs' models. Defendants stand ready to withdraw our motion in that event. We would like to avoid burdening plaintiffs or the Court, but we need a working copy of the models on which your experts rely. Your letter notes that David Page has answered some questions about your production of modeling files, but as the following questions demonstrate, there are some discrepancies between the answers David provided and the materials that were produced to the defendants. The fact that plaintiffs struggle to identify the files that make up your models underscores the difficulties defendants have in guessing which files to utilize among the many that were produced.

Would you clarify these issues from David's letter to Michael Bond dated June 13? Also, in light of the ongoing difficulties, would plaintiffs be willing to allow defendants' experts to view your models on your computers as they operate? This may move us past the ongoing confusion over which files are utilized in the models. We believe the court could grant access to the computers that host your models, but we would prefer to avoid involving the Court.

Questions re: Letter from Dave P. Page to Michael R. Bond, June 13, 2008

Supplemental Response to Request No. 2

Mr. Page lists a series of folders contained in the directory y:\Engel\Materials\GLEAMS\_final\ that supposedly contain all model input files. The list of folders includes one described as:

"GLEAMS" - supporting input files and data for model calibration.

There is no folder with this name in the y:\Engel\Materials\GLEAMS\_final\ directory. This directory does not contain any calibration files at all. There is a folder called "GLEAMS" located elsewhere in the material provided that contains additional model input files, but not in the directory that supposedly contains "final" input files.

The file "2input\routing.xls" is described in the middle of Page 3 and said to contain data for optimizing parameters for the routing equations set forth by Dr. Engel. This file does not exist in any of the materials that we have been provided.

Supplemental Response to Request No. 6

There are no post-processing results provided for the calibration run, as there are for the various scenario runs.

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**From:** Haubert, Jane M. [mailto:jhaubert@motleyrice.com]  
**Sent:** Wednesday, June 25, 2008 01:42 PM  
**To:** Jorgensen, Jay T.; dpage@riggsabney.com  
**Cc:** Ward, Liza  
**Subject:** State of Oklahoma, et. al. v. Tyson, et. al

The attached letter is sent on behalf of Liza Ward.

**Jane M. Haubert** | Legal Secretary | Motley Rice LLC  
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